

IN THE COURT OF APPEALS OF IOWA

No. 0-133 / 09-1334
Filed March 24, 2010

THOMAS R. FREY,
Petitioner-Appellant,

vs.

STEPHANIE A. OHNESORGE,
Respondent-Appellee

STATE OF IOWA, ex rel.,
T.L.F., Minor Child,
Petitioner-Appellee,

vs.

THOMAS R. FREY,
Respondent-Appellant.

Appeal from the Iowa District Court for Dubuque County, Monica L.
Ackley, Judge.

Petitioner appeals the district court decision increasing his child support
obligation. **REVERSED AND REMANDED.**

Russel A. Neuwoehner of Lange & Neuwoehner, Dubuque, for appellant.

Thomas J. Miller, Attorney General, Michael J. Parker and Shea
Schreiber, Assistant Attorneys General, for appellee.

Natalia H. Blaskovich of Reynolds & Kenline, L.L.P., Dubuque, for
appellee.

Considered by Sackett, C.J., and Doyle and Danilson, JJ.

DANILSON, J.

A father appeals from an order entered by the district court which modified his child support obligation as recommended by the Iowa Child Support Recovery Unit (CSRU) in an action initiated under Iowa Code chapter 252H (2009). Upon our review, we reverse the district court and remand for entry of an order consistent with this decision.

On November 28, 2007, due to his loss of employment, Thomas Frey made a written request to the CSRU to review his child support obligation. On January 12, 2009, after an initial hearing, the district court temporarily modified Frey's support obligation from \$288 per month to \$50 per month, with a further review of the support obligation scheduled for May 4, 2009.¹

Between the time Frey requested a review in November 2007 and the time of the hearing in January 2009, he qualified for unemployment benefits. Frey later became employed for two months, but lost his employment when he was laid off in January 2008. In early January 2009, Frey qualified for extended unemployment benefits. These benefits, however, were exhausted sometime in June 2009, prior to the support obligation review hearing on June 22, 2009.

At the hearing, Frey presented evidence establishing that his unemployment benefits had expired and that he had no other income.² However, the State offered a "Child Support Guideline Worksheet" based upon Frey's prior unemployment benefits and requested his support obligation be established at

¹ The May 4, 2009 hearing was continued until June 22, 2009.

² The State acknowledged that Frey was current in his support obligations and in fact, had overpaid in the amount of \$30.91.

\$280.70 per month. The court adopted the State's calculations and set Frey's support obligation at \$281 per month.

Frey filed a motion to amend and modify the court's order. The State's written response to Frey's motion acknowledged that its "Child Support Guideline Worksheet" was inadvertently incorrect and that if support was to be fixed upon Frey's unemployment compensation that it should be modified to the sum of \$141 per month. Notwithstanding, the motion was denied. Frey now appeals.

Upon our de novo review, see Iowa R. App. P. 6.907 (2009), we conclude the court's order adjusting Frey's support obligation from \$50 per month to \$281 per month was not supported by the evidence. See *In re Marriage of Powell*, 474 N.W.2d 531, 534 (Iowa 1991); *In re Marriage of Hagerla*, 698 N.W.2d 329, 331 (Iowa Ct. App. 2005) (stating that a parent's net monthly income is determined from the most reliable evidence presented). At the support obligation review hearing, Frey testified that he had received his last unemployment benefit and that he was unable to find employment. Frey's testimony that he had completed "tons" of job applications, sent out many resumes, and would accept any job (full or part-time) was uncontroverted. Under the facts of this case, we find the district court erred in fixing Frey's support obligation at \$281 per month. See *In re Marriage of Hart*, 547 N.W.2d 612, 615 (Iowa Ct. App. 1996) (noting that the court must carefully consider all of the circumstances relating to the parents' income). We reverse and remand for entry of an order reinstating Frey's support obligation of \$50 per month.

REVERSED AND REMANDED.